



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

although decided by an inferior tribunal, may be cited as involving the principle declared in the case under examination. The court in that case refused to compel by mandamus the furnishing of a "ticker," so-called, to one engaged in the business of wagering on "futures" and similar gambling operations. "The writ of mandamus," says the court, * * * "ought never to be granted where the object sought to be attained is an immoral one, or of pernicious or immoral tendency, or against public policy." Further, the writ of mandamus will be refused "when the effect of granting it would be to violate the intention of an act of the Legislature." *Moore v. Napier*, 64 S. C. 564. See, also, 2 SPELLING ON INJUNCTIONS AND OTHER EXTRAORDINARY REMEDIES, § 1378 and cases cited.

THE DIVISION IN THE REPUBLICAN PARTY IN WISCONSIN.—Popular accounts of this remarkable controversy, dealing chiefly with its dramatic personal and political features, have been widely published throughout the country. But the legal aspects of the situation, though full of novelty and interest, have received no critical attention from the newspaper press. The learned and elaborate opinion of the Supreme Court of Wisconsin, recently handed down, so clearly presents and discusses the issues in that spectacular struggle, that we offer the following brief review of the case as an interesting supplement to the popular history of a party crisis quite unique in American experience.

The case was commenced in the Supreme Court, by Samuel A. Cook, and others, as relators, against Walter L. Houser, Secretary of State. *State v. Houser*, 100 N. W. 964. The said relators were nominees for the various state offices, Cook being nominee for governor, and they alleged that they were the "regular" nominees of the Republican party. The purpose of the complaint which they filed was to enjoin the secretary of state from certifying, to the various county clerks, the names of another group of nominees, headed by Robert M. La Follette, for publication on the official ballots under the designation "Republican Ticket," and to compel the certification of the names of the relators. The relators alleged that although the National Republican Convention of 1904 had decided that the Cook ticket was the regular party ticket, nevertheless Houser, the secretary of state, who was a nominee for re-election on the La Follette ticket, had declared his intention of ignoring the Cook candidates. And they alleged that only a court of equity was adequate to afford relief.

The defendant filed an answer traversing many of the allegations of the complaint, and alleging, among other things, that under section 35, of the revised statutes of 1898, the State Central Committee, appointed in 1902, was authorized, in case of a dispute of this nature, to certify to the secretary of state the regular party nominees, that said committee had taken jurisdiction of the controversy, and that as soon as such committee should duly indicate its choice, said defendant would certify to the county clerks the names of the candidates so chosen.

The relators, by way of amendment to this complaint, alleged that

the committee of 1902, which had assumed to take jurisdiction, was disqualified by reason of prejudice, and moreover, had been superseded by a new Central Committee in 1904, and that in any event the State Central Committee, as a tribunal for the settlement of the pending controversy, was unknown to the statute and wholly without jurisdiction.

A preliminary matter taken up by the court, was the question of its original jurisdiction in the premises. It was held that inasmuch as the cause involved the interpretation and enforcement of legislative enactments respecting the conduct of public elections by means of political parties, it was apparent that a most vital principle in the scheme of constitutional government was at stake, and that the test of original jurisdiction, which "extends to all judicial questions affecting the sovereignty of the state, its franchise or prerogatives, or the liberties of the people," was amply met. "No case," said the court, "has arisen in recent years that more closely concerned all the people than this one," and it was declared that the emergency could not adequately be met "unless this tribunal will open its doors as a court of first instance."

Passing to the merits of the controversy, the crucial point was declared to be Section 35 of the Revised Statutes. There are two clauses in this section, one providing that in case of different factions claiming the same party name, each holding a separate convention or caucus, preference should be given to the convention or caucus held pursuant to the call of the regular party authorities; the other providing that when two or more conventions or caucuses shall be held, each claiming to be the regular caucus or convention of the same political party, preference should be given on the ballots to the nominations of the one certified by the committee officially authorized to represent the party, that is, by the State Central Committee. The argument at the bar seems to have been a bewildering maze of more or less specious reasoning as to which of these clauses covered the case in hand, and the members of the court and the various counsel appear to have had a very difficult task in understanding either their own positions or the arguments of the others. The relators made desperate efforts to convince the court that the situation presented fell under the first clause, so as to avoid the reference of the dispute to the State Central Committee, as provided for in the second clause. But the court in its final opinion, overruled the relators, holding that there was not the slightest ambiguity in the section, that the words used were simple and plain English words, used in their ordinary meaning, and that there was no occasion for interpretation of the section, inasmuch as there was nothing uncertain or obscure in it to be interpreted. "So we cannot escape from the conclusion," said the court, "that the Legislature created a tribunal to determine just such controversies as the one which arose by the circumstances alleged in this case, and that such tribunal for the controversy so created was the Republican State Central Committee appointed by the convention of that party in 1902, and certified to the Secretary of State under Section 31, Rev. St. 1898, the one alleged and admitted to have assumed jurisdiction over such controversy." And it was held that there was no relief from

the decision of this statutory tribunal in the absence of some disqualification to act or a want of jurisdiction.

The question thus resolved itself into an inquiry whether the State Central Committee was disqualified, under the facts of the case, to decide the controversy. Counsel for the relators contended that its decision should be disregarded for two reasons: first, it was a body prejudiced in favor of the La Follette party, and second, it exceeded its jurisdiction in going counter to the decision of the National Republican Convention, the highest party authority, and refusing to recognize the Cook ticket as the "regular" ticket.

Upon the question of disqualification for prejudice, the court held that, under the authorities, mere prejudice did not disqualify a judge at common law. There must be either kinship with the parties or a direct pecuniary interest in the case. But, further, the court declared that it was not disposed to treat the State Central Committee as a court, amenable to the rules applicable to judges, but preferred to consider the committee "a mere administrative body, not a court in any sense, nor were its members expected to exercise the functions of judges, strictly speaking. The matter to be dealt with was a mere legislative privilege, grantable upon any condition the Legislature saw fit to impose. The tribunal was given unqualified authority in respect thereto, so long as it proceeded within its appropriate sphere. None of the rules disqualifying judges or jurors have any application to such a situation."

But the main reliance of the relators was placed upon the action of the National Republican Convention; and it was claimed that the State Central Committee had no jurisdiction other than to endorse the decision of that body. In other words, the relators insisted that the "doors of judicial and other tribunals were closed" to a hearing and decision of the case by reason of the prior decision of the highest party authority, the National Republican Convention; while the defendant insisted that such doors were closed by the fact that the State Central Committee, declared by the statute to be the highest authority in the matter, had assumed jurisdiction of the controversy. The court, however, while discussing the question at length, solely, as it said, because of its importance, entertained not the slightest doubt that the National Republican Convention was wholly without legal authority to regulate the action of the State Central Committee, since final authority in the premises had been placed in this committee by the sovereign will of the people of the state.

Upon the whole case, the court held that the complaint should be dismissed. JUSTICE MARSHALL wrote the opinion of the court, and a separate concurring opinion was prepared by JUSTICE WINSLOW. CHIEF JUSTICE CASSIDAY filed a dissenting opinion, in which he stated his view to be that the case fell under the first, and not under the second, clauses of the statute, and therefore that the State Central Committee had no jurisdiction to determine the controversy. But he went further, and stated that, in his opinion, even if the claim of jurisdiction were granted, this would not be conclusive, and the court ought to go on to consider whether or not there had been in point of fact an unlawful exercise of the Committee's authority. In these views, however, no other member of the court concurred.